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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER GONZALEZ ALBA,

Defendant and Appellant.

E050880

(Super.Ct.No. FVA022705)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson,
Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

On September 5, 2007, defendant and appellant Roger Gonzalez Alba pled guilty to one felony count of second degree commercial burglary under Penal Code¹ section 459. Under the terms of the plea agreement, defendant would be placed on three years of formal probation, instead of being sentenced to state prison. On October 4, 2007, defendant was sentenced to 180 days in jail, with credit for time served, followed by three years of formal probation.

Two years later, on October 28, 2009, defendant failed to appear at a probation review hearing. The court, therefore, revoked defendant's probation. Thereafter, defendant requested a hearing under *People v. Vickers* (1972) 8 Cal.3d 451 (*Vickers*). At the *Vickers* hearing on May 10, 2010, after the trial court considered the evidence and heard legal arguments, the court found that defendant had violated probation term Nos. 2 and 4. The court sentenced defendant to serve one year four months in state prison, the low term for second degree burglary.

On May 13, 2010, defendant filed a timely notice of appeal.

¹ All statutory references are to the Penal Code unless otherwise specified.

II

STATEMENT OF FACTS

At a scheduling conference on April 27, 2010, the prosecutor indicated that he would be relying on the probation report as evidence of defendant's probation violations. Defense counsel objected on the grounds that the report was hearsay evidence. The court scheduled the *Vickers* hearing for May 7, 2010, and informed defendant that at the hearing, "you will be able to confront and cross-examine any witnesses, evidence or witnesses put forth by the People."

At the *Vickers* hearing, however, the prosecutor did not call any witnesses. Instead, he asked the court to take judicial notice of the supplemental probation report. Defense counsel objected on the grounds that the report contained multiple levels of hearsay and lacked foundation. After hearing extensive legal argument on the admissibility of the report, the court ruled that the report was admissible for some purposes. Based on the probation report, the court found that defendant violated probation term No. 4—which states: "Report to the Prob officer in person immediately upon release from custody and thereafter once every fourteen (14) days or as directed."

In addition to the probation report, the prosecution introduced a certified copy of defendant's rap sheet into evidence. The rap sheet was admitted without objection from defense counsel. Based on the rap sheet, the trial court found that defendant had violated term No. 2, which states, in relevant part: "Not remain in, or reenter, the United States

without proper written authorization by the Department of Homeland Security-Bureau of Citizenship and Immigration Services.”

After finding that defendant violated his probation, the court sentenced him to serve a term in state prison.

III

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

IV

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Richli
J.